IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 2797 of 2001

For Approval and Signature:

HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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HARSHADBHAI KANJIBHAI GOHIL
Versus
STATE OF GUJARAT AND ANOTHER

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Appearance :
MR BP MUNSHI for the Petitioner
MR PATHIK ACHARYA, ASSISTANT GOVERNMENT PLEADER for the Respondents

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CORAM : HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

Date : 26/07/2007

ORAL JUDGMENT

1. Present petition is filed praying that:

"28 (A) That this Hon'ble High Court would be pleased to issue a writ of mandamus and a writ in the nature of mandamus and/or an appropriate writ, order or direction, quashing and/or setting aside the proceedings initiated by notice No.ULC/Shakha/No.1(2)/Case No.1092/76, dated 12/7/1999 (Annexure : P) issued by the respondent no.2 and

declare the same to have been abated under the provisions of Sec.3 of the Repeal Act in the interest of justice."

(emphasis supplied)

2. The facts of the case are that the present petitioner filed a statement under Section 6 of the Act in his individual capacity, which had been registered as Case No.ULC 6(1) 1092 under the provisions of the Urban Land Ceiling and Regulation Act, 1976 (hereinafter referred to as, "the said Act") and respondent No.2, as competent authority under the provisions of the said Act, passed order dated 15.12.1982 under Section 9 of the said Act and declared the vacant land admeasuring 223.25 sq. mtrs. as excess as set out in paragraph No.8 of the petition.

2.1 The authorities issued notification under Section 10(1) of the Act on 19.11.1984. The same was published in Government Gazette on 03.01.1985. The notification under Section 10(3) of the Act was issued on 04.04.1985. By virtue of that, land in question vested in the Government.

3. Thereafter, notice under Section 10(5) of the Act was issued on 31.01.1986, which was served upon the petitioner, as set out in paragraph No.5 of the affidavit-in-reply filed by one Shri K.M.Bhimjiyani – Competent Authority (U.L.C.) and Additional Collector (Coordination), Rajkot dated 03.11.2001. The statement made in the affidavit-in-reply is not a bald assertion, as a copy of notice under Section 10(5) of the Act and the acknowledgment

receipt of the service to the petitioner are produced at Annexures-"C" and "D" to the reply.

3.1 It is also stated in the affidavit-in-reply that possession of the land in question was taken over by the Government on 18.07.1992 in presence of the panchas. A copy of the panchnama is annexed at Annexure-"E" to the affidavit-in-reply.

3.2 In addition to that, after taking over the possession of the land in question, the petitioner was informed vide letter dated 21.07.1992. Copy of that intimation is at Annexure-"F" to the reply.

4. In view of the aforesaid annexures to the affidavit-in-reply, the question which crops up for consideration of the Court is as to whether the relief/s prayed for by the petitioner can be granted or not.

5. Mr.Munshi, learned advocate for the petitioner relied upon a decision of this Court in the matter of **INDRAJITSINGH P. GEEL VS. COMPETENT AUTHORITY AND DEPUTY COLLECTOR, AHMEDABAD AND ANOTHER**, reported in 2007 (1) GLR 677. Learned advocate for the petitioner invited attention of the Court to paragraph Nos.9, 10, 11, 12, 16, 17 and thereafter, till the end of the judgment.

5.1 Learned advocate for the petitioner emphasized that the Court in that particular decision has not believed the panchnama, which according to the learned advocate for the petitioner, is almost

similar to that of the panchnama produced on the record of this case. He therefore requested that a similar order like the one which was passed in that case, quashing and setting aside that panchnama, be passed. He submitted that once the panchnama is quashed, the factum of Government having taken over the possession of the land will not survive and then the relief/s as prayed for in this petition can be granted.

6. The submission of the learned advocate for the petitioner cannot be accepted for the reasons set out hereinbelow:

6.1 In the case of Indrajitsingh P.Geel (supra), the grounds on which the panchnama was not believed are set out in paragraph No.26 of the judgment. Relevant part of paragraph No.26 reads as under:

> "..... The said *panchnama* is beset with innumerable infirmities as rightly pointed out by the learned Advocate for the petitioner..... Not only does the *panchnama* not bear the signature of the officer who was authorised by the competent authority to take over possession of the subject lands, the same does not even reflect the actual position of the subject lands. From the overwhelming evidence on record, it is apparent that the subject lands have existing constructions thereon, despite which there is nary a whisper as regards the same in the said *panchnama*. Apart from the fact that there is no reference to any existing construction in the *panchnama*, even the marking against specific columns providing for different contingencies do not reflect the correct position. Besides, in absence of complete and correct addresses of the

witnesses to the *panchnama*, it is difficult to comprehend as to how they would be located if the said *panchnama* is required to be proved before a Court of law. Though, the statute does not provide any specific format of *panchnama* or the manner in which possession of excess vacant lands is to be taken over, but at the same time there has to be some semblance of proper procedure having been followed, which is miserably lacking in the present case."

(emphasis supplied)

7. Now if the panchnama in the case on hand is perused, which is at page No.83, i.e. Annexure-"E" to the affidavit-in-reply, filed by Shri K.M.Bhimjiyani, it mentions case number, name of the party, extent of the land declared excess, date of notice under Section 10(5) of the Act, i.e. 31.01.1986 and the date on which the party was informed to handover the possession, i.e. 11.02.1986.

7.1 The panchnama then records that though the party was informed to remain present to handover the possession, the party did not remain present, at the place mentioned in the notice and therefore, in presence of panchas, the land declared excess was taken possession of. The signatures of the panchas were taken.

7.2 In the panchnama it is specifically mentioned that, 'the land is open land, boundaries of the land are mentioned. The land is bearing survey No.39/2 paiki of village Vavdi admeasuring 223/25 sq. mtrs.; that on the northern side of the land of which possession is taken, there is a road going from Kokariya to Vavdi; that on the

southern side, land bearing survey No.39/1 (agricultural) is situated; that on the eastern side, land bearing survey No.39/2 is situated and on the western side, other part of land bearing survey No.39/2 is situated. The panchnama mentions the names of the panchas and bears their signatures. The panchnama further mentions that the person who has taken possession of the land, is Mamlatdar, Urban Land Ceiling, Rajkot. There is signature of the surveyor along with a date 18.07.1992.

7.3 On page No.84 – Annexure-"F" to the affidavit-in-reply, there is an intimation given to the petitioner on 21.07.1992, informing him that possession of the land described in the panchnama is taken over on 18.07.1992.

8. In view of above, in the considered opinion of this Court, the aforesaid decision is of no help to the petitioner and the present panchnama is found worth accepting.

8.1 At this juncture, Mr.Munshi, learned advocate for the petitioner submitted that the possession is taken over by the Mamlatdar, who is not the competent authority under the law.

8.2 When it is inquired as to whether any such contention is taken in the petition, learned advocate Mr.Munshi perused the petition and is not able to point out any such contention being taken.

9. Learned advocate Mr.Munshi for the petitioner then submitted that this is a law point and this can be agitated at the time of

arguments.

9.1 The submission of learned advocate Mr.Munshi is misplaced inasmuch as, the question as to whether the Mamlatdar, who had taken possession is the competent authority under the Act or not is a pure question of fact and it is required to be raised in the petition, so that it can be answered by the authorities by filing reply.

10. The Court then proceeded with dictation of judgment. After the intervening recess, learned advocate Mr.Munshi requested that he be permitted to make his submissions and point out about the aforesaid question. The Court declined the request, as the Court has already commenced dictation of judgment.

11. In this case, a rejoinder is filed by the petitioner, affirmed on 29.01.2002. Despite that, at the time of arguments, learned advocate Mr.Munshi for the petitioner could not point out anything.

12. Learned advocate Mr.Munshi, a senior advocate, wanted to cite an unreported decision without furnishing a copy of the same either to the Court or to the learned Assistant Government Pleader. The Court declined the same.

12.1 It is an established practice that when learned advocate wants to rely upon an unreported decision, he is supposed to have atleast 3 copies thereof, one to be furnished to the Court and other to the learned Assistant Government Pleader, so that the same can be read simultaneously and can be considered. Learned advocate

Mr.Munshi did not rely upon any other decision then the one which is referred hereinabove.

13. In the present case, perusal of the panchnama reveals that the possession of the land was taken over on 18.07.1992 and intimation of that was given to the petitioner on 21.07.1992. That being so, the present petition is found without any substance and it is dismissed. Rule is discharged with no order as to costs.

14. At this juncture, Mr.Munshi, learned advocate for the petitioner requested that operation of this judgment and order be stayed or be put in abeyance for a period of 4 weeks.

14.1 The fact that the Court has not found any substance in the petition, the request of learned advocate Mr.Munshi is rejected.

(RAVI R.TRIPATHI, J.)

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